Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-982

EDWARD GRADY PARTIN,

Petitioner

Versus

UNITED STATES OF AMERICA,

Respondent

PETITION ON BEHALF OF EDWARD GRADY PARTIN FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

OPINION BELOW

Edward Grady Partin hereby petitions the Supreme Court of the United States for a writ of certiorari to review a decision by the United States Court of Appeals for the Fifth Circuit. The decision of the Court of Appeals has not yet been officially reported and is reproduced at Appendix A, *infra*.

JURISDICTION

The date of the decision by the United States Court of Appeals for the Fifth Circuit is December 12, 1975. Petitioner did not apply for rehearing of that decision and has not applied for an extension of time within which to file this

petition for writ of certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254 and 2101 and Rules 19 and 22, of the Rules of the Supreme Court of the United States. Petitioner asks that this Court review a decision of the Court of Appeals involving an important question of federal law which has not been, but should be, settled by this Court.

QUESTION PRESENTED

The essential and only issue of law presented by this petition for writ of certiorari is as follows:

Is an accused entitled to a jury trial pursuant to 18 U.S.C. §3692, when the accused is charged with criminal contempt of court for allegedly violating a temporary restraining order obtained by a private employer in a labor dispute, under the authority of 29 U.S.C. §185 [§301 of the Labor Management Relations Act] and *Boys Markets, Inc. vs. Retail Clerks Local 770*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970).

STATUTE INVOLVED

The principal statute involved in this case is 18 U.S.C. §3692, which reads as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.
>
> "This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court." June 25, 1948, c. 645, 62 Stat. 844.

STATEMENT OF THE CASE

Edward Grady Partin, the petitioner, is a "business agent" for General Truck Drivers, Warehousemen and Helpers Local Union No. 5, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Teamsters Local No. 5"). On November 27, 1974, Teamsters Local No. 5 was a party to a collective bargaining agreement with Delta Concrete Products Company, Inc. ("Delta"). The contract contained a mandatory arbitration provision and a clause prohibiting any strikes, walkouts or picketing during the term of the contract. On November 27, 1974, there was a wildcat strike or walkout when the Delta employees, members of Teamsters Local No. 5, refused to cross a picket line set up by Mr. Ernest Robinson. Mr. Robinson was a former employee and union steward at Delta who recently had been fired. On that same date, Delta filed a civil action against Teamsters Local No. 5, in the United States District Court for the Middle District of Louisiana, asking for a temporary restraining order and other injunctive relief to enforce the collective bargaining agreement. On the basis of Delta's verified complaint, the District Court issued a temporary restraining order, enjoining Teamsters Local No. 5 and "its officers, agents, members and all persons in active concert and participation with them" from "in any manner engaging in a strike, work stoppage or picketing against plaintiff [Delta] during the term of the collective bargaining agreement between plaintiff and defendant [Teamsters Local No. 5]," and required defendant "to undertake every reasonable means to induce its members to return to their job and discourage any work stoppage and picketing."

The complaint and temporary restraining order were served upon Mr. J. D. Arnold, assistant business agent, at the union hall in Baton Rouge, Louisiana on November 27, 1974. The picketing and work stoppage continued on November 29, and on December 2, 3 and 4 of 1974. November 28

and 30 and December 1 were holidays. On December 4, there were no pickets, but the employees did not come to work. All of the employees came back to work on December 5, 1974. Th union and the company settled the matter and the civil action was dismissed. On December 23, 1974, a criminal contempt proceeding was instituted against petitioner, by a motion for criminal contempt filed by the United States Attorney for the Middle District of Louisiana, alleging a violation of 18 U.S.C. §401 (3). The District Court set the trial date by signing the show cause order attached to the motion for contempt. On January 21, 1975, trial was had before the District Court without a jury. The trial was concluded on the same day and the court took the case under advisement, asking all parties to return on January 23, 1974, for announcement of the verdict. The court found petitioner guilty of contempt of court and sentenced him to imprisonment for six months. Petitioner appealed to the United States Court of Appeals for the Fifth Circuit, which affirmed the decision of the trial court.

ARGUMENT

This petition for writ of certiorari raises a very important question of federal law which has not been, but should be, settled by this Court. Until the recent decision of the Court of Appeals, the issue presented was *res nova*, since there was no reported decision by a federal court deciding the issue. Petitioner herein was charged with criminal contempt of court for allegedly violating a temporary restraining order issued by a federal district court. There is no dispute that the matter arose out of a labor dispute, since the temporary restraining order was obtained by Delta Concrete Products Company, Inc., a private employer, to enforce mandatory arbitration and no strike provisions of a collective bargaining agreement. Delta filed suit against a labor union to enjoin picketing and a wildcat strike. Petitioner does not question the authority of the District Court to issue the temporary

restraining order or the validity of the order, because of ample authority under §301 of the LRMA [29 U.S.C. §185] and *Boys Markets, Inc. vs. Retail Clerks Local 770*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970). However, the trial of petitioner was had before the District Court, without a jury. Petitioner respectfully submits that he was entitled to a jury trial under the provisions of 18 U.S.C. §3692.

Obviously, if only the bare language of §3692 is considered, petitioner was entitled to a jury trial. The Court of Appeals concedes this in its opinion, at pages 910 and 911, as follows:

> "Because the restraining order that Partin was found to have violated undoubtedly grew out of a "labor dispute" — a wildcat strike engendered by an employer's firing and failing to rehire a union steward — on its face §3692 seems to support Partin's position."

However, the Court of Appeals held that the recent decision by the Court in *Muniz vs. Hoffman*, ———— U.S. ————, 95 S.Ct. 2178, 45 L.Ed.2d 319 (1975) "has narrowed the scope of §3692" so that "§3692 grants no right to a jury trial to an alleged contemnor of a *Boys Markets* injunction." As this Court is probably well aware, the question in *Muniz* was whether §3692 required a jury trial in contempt proceedings arising out of the alleged violation of an injunction, entered under §10(l) of the National Labor Relations Act [29 U.S.C. §160(l)], restraining asserted unfair labor practices. The court in *Muniz* held that §3692 did not compel a jury trial, when the National Labor Relations Board obtains an injunction under §10. However, there are important factual differences between the *Muniz* case and the instant case. In *Muniz*, the injunction was obtained upon the request of the National Labor Relations Board, pursuant to §10 of the NLRA, to enjoin unfair labor practices. In the instant case, the injunction was obtained by Delta Concrete Products Com-

pany, Inc., a private employer, pursuant to §301 of the LMRA, to enforce mandatory arbitration and no strike provisions of a collective bargaining agreement. The language of the *Muniz* decision itself and the legislative history of the statutes in question clearly show that petitioner was entitled to a jury trial under §3692.

It is respectfully submitted that the Court of Appeals erroneously extended the *Muniz* decision to prohibit jury trials of proceedings when the accused allegedly violates an injunction obtained by a private employer under §301 of the LMRA. The Court in *Muniz* indicated very strongly that because of the legislative history peculiar only to Board-sought injunctions that its decision was strictly limited to injunctions obtained pursuant to §10. The *Muniz* court based its decision on what it considered clear congressional intent to exempt Board-sought injunctions, under §10 of the NLRA, from all provisions of the Norris-LaGuardia Act. The jury trial provision of 18 U.S.C. §3692 was once a part of the Norris-LaGuardia Act, §11 [29 U.S.C. §111]. The recodification of the jury trial provision, moving it from Title 29 to Title 18 and broadening its language, occurred in 1948, shortly after the injunctive powers of the Board were expanded in 1947 by the Taft-Hartley Act. The controlling question in *Muniz* was whether the difference in language between 29 U.S.C. §111 and 18 U.S.C. §3692 indicated such a change in legislative intent that jury trials were required in criminal contempt proceedings arising out of injunctions obtained by the Board. The Court in *Muniz* held that the recodification reflected no change in legislative intent, and that §3692 did not apply to contempt proceedings arising out of injunctions otbained by the Board.

The reasoning of the Court in *Muniz* makes it apparent why the holding was so limited to Board-sought injunctions. While noting that §10(l) of the NLRB contains no language which expressly exempts the Board from the jury trial requirement, the Court nonetheless relied on the legislative history and companion provisions of §10 to show that Congress clearly intended to bar jury trials in contempt proceedings for violations of Board-sought injunctions. The Court first noted that §10 (h) on the NLRA expressly provides that the Norris-LaGuardia Act, including §11, the predecessor of §3692, "would not limit the power of the federal court *to enforce Board orders*." (Emphasis added.) 95 S.Ct., at 2183. Second, the Court referred to legislative history, clearly indicating that Congress intended that the National Labor Relations Board, in seeking injunctions under §10, would be completely exempt from any procedural limitations of the Norris-LaGuardia Act, including the jury trial requirement of §11. Finally, the Court stressed what had been emphasized throughout the legislative materials: that §10 injunctions were novel statutory creatures, totally unlike the employer-sought injunctions addressed by Norris-LaGuardia, as follows:

> "Injunctions authorized by the Labor Management Relations Act were limited to those sought by the 'Board acting in the public interest and not in vindication of purely private rights.' S. Rep. No. 105, 80th Congress 1st Sess., 8 (1947)." 95 S.Ct., at 2186.

Plainly, the Court reasoned in *Muniz*, §11 of Norris-LaGuardia had no application to these new statutory injunctions. Having established that much, the Court then addressed and rejected the major contention of the petitioner in *Muniz*, that Congress had broadened the scope of §11 when it recodified that provision as 18 U.S.C. §3692.

In the instant case, petitioner does not argue that §11 was expanded in the course of recodification. Instead, petitioner contends that he is entitled to a jury trial under §3692 even if that statute is read narrowly to be coextensive with §11 of the Norris-LaGuardia Act. Thus, the *Muniz* court's discussion of the legislative history, companion statutory

provision and unique features of §10 injunctions are not appropriate to resolving the issue presented in this case: whether §3692 requires a jury trial for contempt proceedings arising out of an injunction obtained by a private employer pursuant to §301 of the LRMA.

The history of the Norris-LaGuardia Act indicates that its jury trial requirement for contempt proceedings applied, at the time of its enactment, to *all* injunctions sought by private employers involving labor disputes. See F. Frankfurter and N. Greene, *The Labor Injunction* (1930) pp. 189-198, 225, 226. This necessarily had to be the intent of Congress, since Congress expressly exempted Board-sought injunctions from all procedural limitations of Norris-LaGuardia, including the jury trial requirement, when the NLRA was first adopted in 1935. However, when Congress first authorized federal jurisdiction of lawsuits to enforce collective bargaining agreements in 1947, by enacting §301 of the Labor Management Relations Act, Congress did not provide an exemption from the jury trial requirement.

In *Boys Markets, Inc. vs. Retail Clerks Local 770, supra,* the Court held that an injunction sought by a private employer for breach of a collective bargaining agreement did not violate provisions of the Norris-LaGuardia Act. That suit for injunctive relief was brought under the authority of §301 (a) of the Labor Manager Relations Act [29 U.S.C. §185 (a)], which is the same statutory authority upon which the employer in this case relied in obtaining an injunction which petitioner was found to have violated. But unlike injunctions under §10 of the same act, which enjoys explicit statutory immunity from the reach of Norris-LaGuardia, including the jury trial requirement, there is nothing in §301(a) or any other provision of federal labor law indicating that injunctions under §301 are exempt from the procedural requirements of the Norris-LaGuardia Act, including former §11, now recodified as §3692.

There was no indication in *Boys Markets* that injunctions under §301 would be given the same generous rein accorded to Board-sought injunctions under §10. Indeed, the thrust of the *Boys Markets* decision is quite to the contrary. The Court in *Boys Markets* was careful to emphasize that the availability of federal jurisdiction under §301 did not mean that the policies and restrictions of Norris-LaGuardia would have no application to such suits. The Court instead, went to some length to stress the need for accommodation between §301 (a) and the Norris-LaGuardia Act. 398 U.S., at 249-253. The Court reconciled and accommodated the two statutes only to the extent necessary to preserve the important national labor policies underlying the later legislation. The anti-injunctive provisions of Norris-LaGuardia were found to conflict with the effective enforcement of mandatory arbitration clauses of collective bargaining agreements through injunctive relief. However, the Court emphasized that it would accommodate the two statutes only to the extent necessary to preserve the national labor policy of promoting peaceful labor relations through arbitration. There is no language in the *Boys Market* decision which in any way indicates that the important procedural protection of a jury trial, guaranteed by §3692 of Title 18, formerly §11 of the Norris-LaGuardia Act, was not to apply to contempt proceedings arising out of an injunction obtained by a private employer pursuant to §301 (a) of the LMRA.

Thus, not only does the holding in *Muniz* not control petitioner's case, but it also supports petitioner's position by emphasizing the differences in legislative history between §10 and §301 of the LMRA and the distinction between the board acting in the public interest and the vindication of purely private rights. Also, the *Boys Markets* decision supports the position of petitioner by showing that the jury requirement of §3692 can only be held inapplicable, if to do so would thwart an important national labor policy. The important procedural protection of a jury trial would in no way

deter effective enforcement of an injunction obtained under §301, since the trial of a contempt proceeding would only involve after-the-fact punishment. Permitting a jury trial in such a situation, obviously would not impede any important national labor policy. Because of the foregoing reasons and authorities, petitioner clearly was entitled to a jury trial in this case under 18 U.S.C. §3692.

CONCLUSION

Petitioner, Edward Grady Partin, respectfully requests that this court reverse the decision of the United States Court of Appeals for the Fifth Circuit, directing that petitioner is entitled to jury trial pursuant to the provisions of 18 U.S.C. §3692, and remanding this matter for a new trial in accordance with the decision of this Court.

Respectfully submitted:

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APPENDIX A

UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

EDWARD GRADY PARTIN
Defendant-Appellant

No. 75-1378

United States Court of Appeals,
Fifth Circuit

Dec. 12, 1975

Business agent for local union was convicted before the United States District Court for the Middle District of Louisiana, E. Gordon West, J., of Criminal contempt for knowing and wilful disobedience of a "Boys Markets" temporary restraining order against a strike against an employer. The business agent appealed. The Court of Appeals, Wisdom, Circuit Judge, held that the agent was not entitled to a jury trial; that the evidence was sufficient to support the conviction; that the Government's complaint conformed to the requirements of rule of criminal procedure providing that a criminal contempt shall be prosecuted on notice which shall state the essential facts constituting the criminal contempt charge and describe it as such; and that even if the Government used perjured testimony, its use constituted harmless error.

Affirmed.

Appeal from the United States District Court for the Middle District of Louisiana.

Before WISDOM, CLARK and RONEY, Circuit Judges.

WISDOM, Circuit Judge:

The primary issue in this case involves the effect of *Muniz v. Hoffman*, 1975, —— U.S. ——, 95 S.Ct. 2178, 45 L.Ed.2d 319 on the right to a jury trial of an alleged contemnor of a *Boys Markets* injunction.[1]

[1-3] Edward Grady Partin, the defendant-appellant, is a "business agent" for General Truck Drivers, Warehousemen, and Helpers Local No. 5. The district court, consistent with the *Boys Markets* interpretation of § 301 of the Labor Management Relations Act,[2] entered a temporary restraining order on November 27, 1974, enjoining Local No. 5 and "its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against Delta Concrete Products Company". For his knowing and willful disobedience of the restraining order, the district court convicted Partin for criminal contempt in violation of 18 U.S.C. § 401(3),[3] and sentenced him to six months imprisonment. Although prior to trial Partin made no request for a jury, on appeal his principal argument challenges his conviction

1. **Boys Markets, Inc. v. Retail Clerks Local 770**, 1970, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199.

2. 29 U.S.C. § 185. Although the record in this appeal does not contain the collective bargaining agreement whose violation led to the TRO, the district court's unreported opinion states that the agreement contained a "no strike" clause. Furthermore, references to arbitration in the record and briefs suggest that the agreement included a mandatory arbitration provision. It appears, therefore, that the prerequisites to a **Boys Markets** injunction were present. See **Gateway Coal Co. v. United Mine Workers**, 1974, 414 U.S. 368, 374, 94 S.Ct. 629, 38 L.Ed.2d 583. The validity of the injunction under **Boys Markets** was not challenged by direct review nor asserted as a defense to the contempt charge.

3. A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

on the ground that the court failed to afford him a jury trial. We hold that Partin had no constitutional[4] or statutory right to a jury trial[5] and this his other assignments of error also are not valid. Accordingly, we affirm.

I.

[4] The appellant's argument that he is entitled to a jury trial is premised on 18 U.S.C. § 3692, which provides:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed. . . .

Because the restraining order that Partin was found to have violated undoubtedly grew out of a "labor dispute"—a wildcat strike engendered by an employer's firing and failing to rehire a union steward—on its face of §3692 seems to support Partin's position. Unfortunately for Partin, however, the recent Supreme Court case of *Muniz v. Hoffman* has narrowed the scope of § 3692. In the light of *Muniz*, § 3692 grants no right to a jury trial to an alleged contemnor of a *Boys Markets* injunction.

In *Muniz*, the question was whether § 3692 required a jury trial in contempt proceedings arising out of the alleged violation of an injunction, entered under § 10(l) of the Labor

4. It is commonly understood that there is no constitutional right to a jury trial in criminal contempt proceedings when the sentence actually imposed is not greater than six months and the statute setting the possible penalties does not explicitly authorize such sentences. **Codispoti v. Pennsylvania**, 1974, 418 U.S. 506, 94 S.Ct. 2687, 41 L.Ed.2d 912; **Bloom v. Illinois**, 1968, 391 U.S. 194, 88 S.Ct. 1444, 20 L.Ed.2d 522; **Cheff v. Schnackenbert**, 1966, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629. The appellant's arguments to the contrary are frivolous.

5. Because of our conclusion that there was no statutory right to a jury trial, it is unnecessary for us to reach the question whether such a right, if it existed, could be waived by the defendant's failure to demand a jury. We note, however, that trial by jury would have exposed Partin to a more severe penalty than a six months sentence.

Management Relations Act, restraining asserted unfair labor practices. The Court held that § 3692 did not compel a jury trial. The essential elements of the Court's reasoning were its findings that § 3692 had originally been enacted as § 11 of the Norris-LaGuardia Act, that § 3692 was no broader now than was its predecessor,[6] and that the injunction involved in the case did not arise from the Norris-LaGuardia Act, but from the Wagner and Taft-Hartley Acts.[7] The injunction secured by the Delta Concrete Products Company here similarly did not arise under the Norris-LaGuardia Act, but under the Taft-Hartley Act. We are constrained, therefore, to follow the Supreme Court's reasoning in *Muniz*.

The appellant contends that *Muniz* should be limited to its facts. He contends first that the Supreme Court's holding was based on the fact that the injunctions secured under § 10(l) of the Taft-Hartley Act were sought, not by private parties, but by a governmental body obligated to act in the public interest. He argues that only this special "screening" by the NLRB permits an encroachment upon the barrier to judicial abuse of injunctions embodied in § 3692. This "screening" factor was important to the *Muniz* Court. As support for its conclusion that the injunctions permitted by the Taft-Hartley Act fell "outside the framework of Norris-LaGuardia",[8] the Court cited three instances of Taft-Hartley's con-

6. —— U.S. at ——-——, 95 S.Ct. at 2186-89, 45 L.Ed.2d at 329-34. Section 11 of the Norris-LaGuardia Act provided that "[i]n all cases arising under [Sections 101-115 of this title] in which a person shall be charged with contempt in a court of the United States . . ., the accused shall enjoy the right to a . . . trial by . . . jury . . .". As part of the 1948 revision of the criminal code, § 11 was repealed and replaced by § 3692. The Supreme Court in **Muniz** ruled that, despite the change in the statute's language, there was no intent by Congress to broaden the statute's scope. The Court relied primarily on the legislative history of the revision, which declared that "[t]he original intent of Congress is preserved," S.Rep. No. 1620, 80th Cong., 2d Sess., 1 (1948), and the Revisor's Note to § 3692, which explained merely that "reference to specific sections of the Norris-LaGuardia Act . . . were eliminated," Rep. No. 304, 80th Cong., 2d Sess., A176 (1948). See also **Fourco Glass Co. v. Transmira Corp.**, 1957, 353 U.S. 222, 226-27, 77 S.Ct. 787, 1 L.Ed.2d 786.

7. —— U.S. at ——, 95 S.Ct. at 2183, 45 L.Ed.2d at 327.

8. **Id.** —— U.S. at ——, 95 S.Ct. at 2184, 45 L.Ed.2d at 328.

gressional history demonstrating that the NLRB's acting in the public interest was relevant to the creation of NLRB authority to seek injunctive relief.[9]

Second, the appellant points out that § 10(h) of the Wagner Act provided that in "granting appropriate temporary relief for a restraining order, or . . . enforcing . . . or setting aside . . . an order of the Board . . . the jurisdiction of courts sitting in equity shall not be limited by" the Norris-LaGuardia Act. The *Muniz* Court also relied upon § 10(h) in reaching its decision. Where, as in a *Boys Markets* situation, the power to issue an injunction arises from § 301 of the Taft-Hartley Act, § 10(h) of the Wagner Act is clearly inapplicable.

These suggested distinctions between the appellant's case and *Muniz* are patent. Nevertheless, the critical factor in *Muniz* was not the legislative history of the Taft-Hartley Act, nor was it § 10(h) of the Wagner Act.[10] The critical factor was that

> those acts expressly or impliedly, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970), authorized various kinds of injunctions in labor dispute cases and expressly or impliedly exempted those injunctions from the jurisdictional and procedural limitations of Norris-LaGuardia to the extent necessary to effectuate the provisions of those Acts.

9. The Court also seemed to find the NLRB's participation significant when it held that the revision of § 11 into § 3692 was not intended to broaden the right to a jury trial. **Id.** —— U.S. at ——-——, 95 S.Ct. at 2186, 45 L.Ed.2d at 330. In our view, however, the intention of the revisors not to change the substance of the criminal code independently requires that we adopt the limited view of § 3692. See **Id.** —— U.S. at ——-——, 95 S.Ct. at 2187-88, 45 L.Ed.2d at 331-32 n. 10; note 5 **supra.**

10. Justice Stewart, in his **Muniz** dissent, persuasively attacked the force of the argument based on § 10(h), primarily by pointing out that that statute pertained to jurisdiction, whereas the right to a jury trial pertains, not to jurisdiction, but to procedural safeguards. The majority did not take this argument lightly. —— U.S. at ——, 95 S.Ct. at 2184, 45 L.Ed.2d at 328, n. 7. As we read the opinion, however, the Court would have reached the same result in the absence of § 10(h).

> The crucial issue is whether in enacting the Wagner and Taft-Hartley Acts, Congress not only intended to exempt the injunctions they authorized from Norris-LaGuardia's limitations, but also intended that civil and criminal contempt proceedings enforcing those injunctions were not to afford contemnors tht right to a jury trial.[11]

In determining congressional intent, the *Muniz* Court was influenced by the original language of Norris-LaGuardia's § 11, which by its own terms was limited to injunctions "arising under" that Act. In *United States v. United Mine Workers*, 1947, 330 U.S. 258, 298, 67 S.Ct. 677, 91 L.Ed. 884, the Supreme Court held that § 11, so limited, did not apply to an injunction secured by the United States because such an injunction was not governed by the substantive provisions of the Norris-LaGuardia Act.[12] Following the reasoning of *United Mine Workers*, the *Muniz* Court again ruled that

> § 11 by its own terms [does] . . . not apply to contempt cases arising out of these injunctions. By providing for labor act injunctions outside the frame-

11. **Id.** —— U.S. at ——, 95 S.Ct. at 2182, 45 L.Ed.2d at 326.

12. See also **Brotherhood of Railway Trainmen v. Chicago R. & I. R. R.**, 1957, 353 U.S. 30, 40, 77 S.Ct. 635, 1 L.Ed.2d 622, in which the Supreme Court held that a district court had power to enjoin a strike, notwithstanding the Norris-LaGuardia Act, due to the provision in the Railway Labor Act § 3, 45 U.S.C. § 153, that awards of the National Railroad Adjustment Board shall be "final and binding upon both parties to the dispute". The basis of the Court's decision was that the Norris-LaGuardia Act could not be read alone, and that there must be an accommodation between different statutes adopted in a pattern of labor legislation. **Brotherhood of Railway Trainmen**, like **Boys Markets**, is a case limiting the scope of the Norris-LaGuardia Act, where the abuses protected by that Act do not weigh as heavily as the gains secured by an injunction. Although the Court has emphasized that an "accommodation" is taking place, language of accommodation cannot hide the fact that Congress—insofar as the § 301 injunction is concerned—has repealed portions of the Norris-LaGuardia Act. The extent of this repeal is uncertain. A recent decision of this Court suggest strongly that § 9 of the Norris-LaGuardia Act, requiring that labor injunctions prohibit only such specific acts as are expressly complained of, is applicable to federal courts in **Boys Markets** situations. **United States Steel Corp. v. United Mine Workers**, 5 Cir. 1975, slip op., 519 F.2d (1975). **Muniz** has effectively held, however, that § 3692 is not applicable with respect to injunctions permitted by later statutes; the Court's explicit extension of **Muniz** to the **Boys Markets** situation seems, to this Court, to be inevitable.

> work of Norris-LaGuardia, Congress necessarily contemplated that there would be no right to jury trial in contempt cases.

Here, as in *Muniz*, an injunction was entered "outside the framework of Norris-LaGuardia." The injunction is entitled, therefore, to the traditional protection of non-jury contempt proceedings.[13]

The appellant further contends that *Boys Markets* was, by its own language, a narrow case. As such, it should be narrowly construed. The scope of the Norris-LaGuardia Act should be limited only when it is necessary to further national labor policy as reflected in congressional enactments. Because, according to the appellant, granting a jury trial to alleged contemnors of § 301 would not impair any labor policy, *Boys Markets* should be inapplicable in construing § 3692. The appellant's interpretation, however, would amount to an unjustified encroachment upon the power of federal courts to enforce federal law, and the intent of Congress, as interpreted in *Boys Markets*, to enforce mandatory arbitration provisions in collective bargaining agreements freely agreed to by opposing padties.[14]

13. **Muniz** noted, in holding that the code revision did not alter the scope of § 11, see note 5 **supra**, "the historic rule that there was no right to a jury trial in contempt proceedings". —— U.S. at ——, 95 S.Ct. at 2187, 45 L.Ed.2d at 331; see **United States v. Barnett**, 1965, 376 U.S. 681, 692-95 & n. 12, 84 S.Ct. 984, 12 L.Ed.2d 33; **Green v. United States**, 1958, 356 U.S. 165, 183 & n. 14, and 189-93 (Frankfurter, J., concurring), 78 S.Ct. 632, 2 L.Ed.2d 672.

14. See 45 Tex.L.Rev. 179-80 & n. 20 (1966), which suggests that providing jury trials to alleged contemnors when the sentence to be imposed is six months or less may impair the ability of the federal judiciary to enforce laws unpopular with the local populace. See also Note, **The Supreme Court, 1969 Term**, 84 Harv.L.Rev. 30, 200 (1970), and 12 B.C. Ind.&Com.L.Rev. 295, 305 (1970), which suggest that the **Boys Markets**-type injunction does not jeopardize the interests Congress sought to protect by the Norris-LaGuardia Act. Although Note, **The New Federal Law of Labor Injunctions**, 79 Yale L.J. 1593, 1601-02 (1970), cautions that procedural questions should be resolved in favor of the unions in **Boys Markets** situations, it also states the historic abuses of due process in labor injunction situations were the denials of notice and hearing, and the unlimited scope of restraining orders, **id.** at 1606.

[5] Although there are constitutional limitations upon the sentence which can be imposed by a court, sitting without a jury, in contempt proceedings, see *Bloom v. Illinois*, 1968, 391 U.S. 194, 88 S.Ct. 1444, 20 L.Ed.2d 522, such constitutional limitations do not apply here. There is no reason to doubt that Congress, when it gave federal courts the power to enforce collective bargaining agreements, believed that the traditional judicial methods of enforcement would be available.[15] *Muniz* has decided that, by keeping § 3692 in our statutory system, Congress did not intend to limit traditional federal court contempt powers within the newly granted injunctive jurisdictions.[16]

II.

[6,7] Partin contends that there was insufficient evidence to support his conviction. In judging the adequacy of the evidence in a contempt case, as in every other case, the reviewing court is obligated to consider the evidence, along with all inferences reasonably drawn from such evidence, in the light most favorable to the government. *In re Joyce*, 5 Cir. 1975, 506 F.2d 373, 376; *cf. United States v. Lansky*, 5 Cir. 1974, 496 F.2d 1063, 1069; *Blachly v. United States*, 5 Cir. 1967, 380 F.2d 665, 675. So viewing the record, we conclude that the district court had sufficient evidence to find Partin guilty beyond a reasonable doubt.

The carefully detailed findings of fact by the trial judge need only be summarized. There was testimony that Partin assigned Earl Jones to talk to Delta Concrete president Holland and to get back steward Robinson's job. Jones' failure at this task resulted in a phone call from Partin to Holland, during which Partin threatened to "bring [his] men out". After Robinson began picketing Delta Concrete, all Local No.

15. See note 13 **supra.**

16. As **Muniz** noted, many federal courts have construed § 3692 very narrowly. See cases cited —— U.S. at ——, 95 S.Ct. at 2159, 45 L.Ed.2d at 334 n. 12.

5 members refused to cross his picket line. One local member testified that he would have returned to work if ordered to do so by "the head of the union—Mr. Partin".

The temporary restraining order was served on Union agent Arnold, at the local's office, on November 27, 1974. The trial court found that the contents of the TRO were well known to Partin shortly thereafter. Nevertheless, the wildcat strike did not end. On December 2, at a meeting with representatives of Delta Concrete and sister concrete ready-mix companies, Partin indicated that he was not in the least concerned with the restraining order. He was quoted as saying, "Judge West could issue some more of those papers but they were a mockery of justice"; that the police would be ineffective in helping Delta Concrete because he "would bring his whole union over to take care of strike breakers"; and that he would "shut down the whole industry if need be."

After reaching a tentative agreement with Holland, Partin reported back to the members of the local, explained the agreement, and informed the strikers that they could not continue to strike without his permission. The strikers immediately agreed to return to work the next day.

The reasonable inferences which could be drawn from this and other evidence are that Partin had control over the behavior of the local members, that he believed that he was not obligated to comply with the TRO, and that he intended to, and did, use the strike as a bargaining weapon despite the court's order to use reasonable efforts to end the strike. The record fully supports the court's finding that Partin "willfully disobeyed [the TRO] . . . beyond a shadow of a doubt."

III.

[8] Partin raises a number of other issues. He contends, for example, that the TRO was constitutionally defective for overbreadth and vagueness. We do not comment upon the con-

stitutionality of the TRO. The TRO was not appealed, nor was the district court asked to clarify or modify it. Even if Partin had doubts about the scope or meaning of the injunction, he acted before taking any legal steps, to resolve his doubts.[17] Once an injunction has been willfully violated, the court's authority has been affronted. The "way to raise" the questions of "the breadth and vagueness of the injunction itself" is "to apply to the . . . courts to have the injunction modified or dissolved." *Walker v. City of Birmingham*, 1967, 388 U.S. 307, 316-21, 87 S.Ct. 1824, 1830, 18 L.Ed.2d 1210.

[9] Next, Partin contends that the government's complaint fails to conform to the requirements of F.R.Crim.P. 42(b).

Rule 42(b) provides in part that:

> "A criminal contempt . . . shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such."

The motion for criminal contempt is said by Partin to violate Rule 42(b) because it does not state any facts constituting the alleged contempt. The motion sets out the substance of the TRO an dalleges that Partin "knowingly and willfully disobey[ed] a lawful order" of the court. This is sufficient compliance with Rule 42(b). See *Backo v. Carpenters' Local 281*, 2 Cir. 1970, 438 F.2d 176, 181, *cert. denied*, 404 U.S. 858, 92 S.Ct. 110, 30 L.Ed.2d 99; *MacNeil v. United States*, 1 Cir. 1956, 236 F.2d 149, 151-52, *cert. denied*, 352 U.S. 912, 77 S.Ct. 150, 1 L.Ed.2d 119; *United States v. Schine*, W.D.N.Y. 1954,

17. See **Regal Knitwear Co. v. NLRB**, 1945, 324 U.S. 9, 15, 65 S.Ct. 478, 89 L.Ed. 661; **New Jersey v. City of New York**, 1935, 296 U.S. 259, 56 S.Ct. 188, 80 L.Ed. 214; **Wirtz v. Ocala Gas Co.**, 5 Cir. 1964, 336 F.2d 236, 240; **Flavor Corp. of Amer. v. Kemin Indus. Inc.**, 8 Cir. 1974, 503 F.2d 729, 732; **Developments in the Law—Injunctions**, 78 Harv.L.Rev. 994, 1084 (1965).

125 F.Supp. 734, 737. It must be remembered that Partin's alleged contempt was basically in participating in the wildcat strike when his union office and the court order required him to use reasonable means to induce the members of Local 5 to return to work. Partin cannot seriously contend that he was unaware of the nature of this contempt, nor can he demonstrate how a more explicit motion—asuming that such a motion was possible—would have aided him in the preparation of his defense. See *United States v. Robinson*, 9 Cir. 1971, 449 F.2d 925, 930-31 (dictum); *cf. United States v. Joyce*, 7 Cir. 1974, 498 F.2d 592, 595 (failure to characterize contempt proceeding as "criminal" did not prejudice defendant); *FTC v. Gladstone*, 5 Cir. 1971, 450 F.2d 913, 915-16 (same).

[10] The appellant also contends that the government used perjured testimony. The district court, in response to Partin's motion for a new trial,[18] adequately answered this contention. The court found that

> "if [he] were to exclude and extract and delete completely from this record all the testimony of Mr. Arthur Jones [, the alleged perjurer], it would not make one iota's difference in the prior decision of this Court, [to] hold the defendant in criminal contempt. . . ."

Arthur Jones' testimony related primarily to statements made by Pedescleaux, a co-defendant of Partin who was acquited for lack of sufficient evidence. Without deciding, therefore, whether the prosecution used perjured evidence against Partin,[19] we hold that the harmless error rule, F.R.Crim.P 52(a), precludes the relief sought on this ground by Partin.

18. We do not decide whether the defendant's counsel's oral notification of the district court that counsel wanted to give notice of an appeal deprived the court of jurisdiction to entertain the motion for a new trial. The district court ruled on the merits of the new trial motion.

19. We note in passing that the prosecution attempted to rectify the alleged misstatements of Arthur Jones by producing an FBI agent who impeached Jones' testimony. Moreover, it appears that the misstatement by Jones was in Partin's favor.

[11,12] This Court has considered the appellant's other allegations of error. We hold that they have no merit.[20] The judgment is affirmed.

20. The appellant also contends that he was entitled to be tried by a jury under 18 U.S.C. § 402; that he was deprived of his Sixth Amendment right to confrontation by the district court's refusal to allow both of Partin's attorneys to cross-examine Arthur Jones; that he was deprived his Sixth Amendment right to an opportunity to prepare his defense; and that the district court's granting the prosecution an ex parte restrictive order foreclosing after a certain date the filing of pre-trial motions deprived him of due process. The record demonstrates that the defendant was not hampered by the limiting of cross-examination in accordance with the district court's local rule; that the defendant had adequate time within which to prepare a defense; and that the defendant had ample time within which to move for a modification of the restrictive order.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CONSOLIDATED CASES:

UNITED STATES OF AMERICA	CRIMINAL
VERSUS	NUMBER 74-114
ERNEST ROBINSON and EDWARD GRADY PARTIN	
AND	
UNITED STATES OF AMERICA	CRIMINAL
VERSUS	NUMBER 75-1
EARL JONES, DENNIS PEDESCLEAUX, AND J. D. ARNOLD	

* * * * *

On November 27, 1974, the defendant, Ernest Robinson, a member of General Truck Drivers, Warehousemen and Helpers Local No. 5, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "Local #5"), began to picket the business known as Delta Concrete Products Company, Inc. of Denham Springs, Louisiana (hereafter "Delta" or "Delta Concrete"). Robinson had been employed as a truck driver for Delta Concrete and had recently been fired. The truck driver employees of Delta Concrete were represented by Local #5 as their bargaining agent, and worked pursuant to a collective bargaining agreement between Local #5 and Delta Concrete. The collective bargaining agreement contained a "no strike" clause. When the picket appeared on November 27, 1974, all of Delta's truck drivers refused to report for work, and the business was effectively shut down. On the afternoon of November 27, 1974, Mr. Victor Holland, President of Delta Concrete, appeared with his attorney at this Court and requested the issuance

of a temporary restraining order temporarily prohibiting the continuance of the strike until a hearing on a preliminary injunction could be held. The Court being of the opinion that there was a prima facie showing that the strike was in violation of the collective bargaining agreement, and that continuation of the strike would cause irreparable damage to Delta, and that no immediate remedy at law was available to Delta, a temporary restraining order was issued at 3:00 p.m. on November 27, 1974, and a hearing on the motion for a preliminary injunction was set for December 17, 1974 at 10:00 a.m. Despite service of the temporary restraining order (T.R.O.) on J. D. Arnold, agent for Local #5 at 4:05 p.m. on November 27, 1974, and on Ernest Robinson personally on November 29, 1974, the picketing continued for several days and Delta Concrete continued to be shut down. As a result of the continued strike and work stoppage, the two motions for criminal contempt now under consideration were filed by the United States Attorney for the Middle District of Louisiana. One of these motions, bearing Docket No. CR 74-114, named Ernest Robinson, a plant steward at Delta Concrete and the one who was actively picketing the plant, and Edward Grady Partin, a business agent for Local #5, as defendants, and the other motion, bearing Docket No. CR 75-1, named Earl Jones, Dennis Pedescleaux, and J. D. Arnold, all members of Local #5, as defendants. The two motions for criminal contempt were consolidated and set for trial on January 21, 1975, at which time the defendants Edward Grady Partin, Earl Jones, Dennis Pedescleaux, and J. D. Arnold appeared with counsel and announced ready for trial. The defendant Ernest Robinson appeared without counsel and announced that he wished to obtain his own counsel. Thereupon the Court ordered Robinson's trial severed and reset that trial for February 3, 1975. No defense motions of any kind were filed by any parties prior to trial, and the trial as to the remaining defendants was held. At the close of the Government's case, a motion for judgment of acquittal was made on behalf of the defendant, J. D. Arnold,

which was granted, and that defendant was thereupon dismissed from these proceedings. Now, after due consideration of all of the evidence in the case, the Court concludes, for the reasons hereinafter stated, that the defendant, Edward Grady Partin, is indeed guilty of criminal contempt of this Court, but that the evidence was insufficient to support a similar finding as to the defendants, Earl Jones and Dennis Pedescleaux.

FINDINGS OF FACT

Some time prior to November 22, 1974, Delta Concrete fired Ernest Robinson, a truck driver and a member of Local #5. Robinson also acted as plant steward for the union at Delta. On November 22, 1974, the defendant, Earl Jones, assistant business manager for Local #5, called Mr. Holland, president of Delta, by telephone and insisted that Ernest Robinson be re-hired. He stated that Mr. Partin had assigned him the job of getting Robinson back to work. Mr. Holland refused. Later that same day, Earl Jones went to the Delta plant to see Mr. Holland. He told Mr. Holland that he had to get his steward (Ernest Robinson) back to work and that if Mr. Holland would not cooperate it might be necessary to "shut him down." He stated that it was important to the union to get Robinson back to work because some of the members felt that Local #5 did not sufficiently back up its members. Mr. Holland said he wanted to talk with Mr. Partin, but Jones said that Partin had assigned this job to him. Later that day, after Jones left the Delta plant, Mr. Holland received a telephone call from Mr. Partin who wanted to know why Robinson had not been re-hired. According to Mr. Holland, he, Holland, suggested that they let their attorneys work their problems out. But Mr. Partin replied that he was not about to let Mr. Holland's "anti-union lawyer" have anything to do with his problems. Mr. Partin then told Mr. Holland that "If we have to have a battle at your place, I'll bring my men out Monday morning and we'll have a good one."

On November 26, 1974, a meeting of the truck drivers for Delta was held at Local #5 union hall. The defendant, Dennis Pedescleaux, an assistant business manager for the union, was present and informed the members that the next day "one fellow would picket" the Delta plant. According to the witness Arthur L. Jones, one of the truck drivers, Mr. Pedescleaux said it was not a Local #5 strike but that he would hope no one would cross the picket line. Mr. Lawrence Anderson, the union attorney, was also at the meeting and he also said that there would be a picket line the next morning and also mentioned a work stoppage. Mr. Jones further testified that "I knew not to cross the line because I had been around these things before." When asked if he would cross the picket line if told to do so, he stated that he would if it came from "high authority of Local #5." On further questioning he testified that such an order would have to come from "the head of the union — Mr. Partin."

Robinson was not re-hired, and on November 27, 1974 he appeared as a picket in front of the Delta plant carrying a sign reading "Delta Concrete Is Unfair To Me, Ernest Robinson." After this picket appeared, all members of Local #5 refused to cross the picket line, and Mr. Holland, with his attorney, applied to this Court for the temporary restrainig order hereinbefore mentioned. This restraining order, issued at 3:00 p.m. on November 27, 1974, provided, in pertinent part, as follows:

> IT IS ORDERED that the defendant General Truck Drivers, Warehousemen and Helpers Local Union No. 5, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, members and all persons in active concert and participation with them, be, and they are hereby restrained from in any manner engaging in a strike, work stoppage or picketing against plaintiff during the term of the collective bargaining agreement between plaintiff and defendant, and required to undertake every reasonable means to induce its members to return to their jobs and discontinue any work stoppage and picketing.
>
> "IT IS FURTHER ORDERED that this temporary restraining order shall be effective from this day for a period of ten (10) days unless sooner dissolved or extended for good cause shown . . ."

On the same day, November 27, 1974, at approximately 4:05 p.m., Deputy United States Marshal John E. Abreo served this T.R.O. at the union office of Local #5 on J. D. Arnold, an agent for the union, by first offering the T.R.O. to Mr. Arnold personally and telling him what it was, and then, at Mr. Arnold's instruction, handing the T.R.O. to Mr. Arnold's secretary. Mr. Arnold was a member and an agent for Local #5. The evidence clearly shows, without the slightest contradiction, that the contents of the T.R.O. were well known to all of the defendants soon after it was served, and beyond any question at all, it was known to all defendants before they attended a meeting concerning the Delta Concrete problem on December 2, 1974 at the headquarters of the Association of General Contractors.

Despite the issuance of this temporary restraining order, and despite the fact that all of the defendants now before the Court knew of its contents, the picketing and work stoppage continued. The defendants all contend that the strike was not authorized by the union and that they had no control over it. As the evidence in this case clearly shows, this contention is not only unbelievable, but it is in no way borne out by the remaining testimony in this case.

On December 2, 1974, five days after the issuance of the T.R.O., a meeting was held at the Association of General Contractors (AGC) hall. Representatives of several concrete ready-mix companies were present as were representatives of the AGC and all of the defendants. As testified to by several

of those present, Mr. Partin did most of the talking. Mr. Holland testified that "Mr. Partin got after me pretty good" and said he wanted to make it clear that no concrete would be delivered by strike breakers from my plant. He further testified — "And he said that I was about to touch off a race riot. He said the local Sheriff's Office was not going to give me any support. That they had contacted him before about getting in contact with me, and that I might get a little support out of the Denham Springs Police, but it would be ineffective because there was going to be so many black people converge on my premises, as soon as I tried to haul any concrete, that the local police would be ineffective." During this meeting, according to all of the witnesses, Mr. Partin outlined the necessary terms for a settlement of the dispute. One of those terms was that Ernest Robinson must be re-hired as a truck driver, but not necessarily re-appointed as a steward. When Mr. Partin was reminded that a temporary restraining order had been issued and was in force, Mr. Partin replied, according to Mr. Holland, that "he was not in the least concerned with the restraining order."

Further testimony concerning the meeting of December 2, 1974 at the AGC hall was given by Mr. Wallace Heck, Jr. He testified that at the meeting Mr. Partin "got all over Mr. Holland" and when he was reminded of the temporary restraining order he replied that "He wasn't worried about all those court orders because they were a mockery of justice." He further testified that Mr. Partin informed Mr. Holland that neither the Sheriff nor the police would help him and that if necessary he, Partin, would bring his whole union over to take care of strike breakers. He also stated that he would "shut down the whole industry if need be." Mr. Wallace Heck, Sr. also attended that December 2 meeting. He testified that Mr. Partin said that "Judge West could issue some more of those papers but they were just a mockery of justice." He testified that Mr. Partin told him that he would keep Delta

shut down until Ernest Robinson was re-hired, and that if necessary he would shut the whole industry down.

On the following day, December 3, 1974, another meeting was held at the Holiday Inn South in Baton Rouge, at which meeting all defendants, Mr. Holland, Mr. Paul Stevens, sales manager for Delta Concrete, and others were present. Mr. Holland testified that at this meeting, while the picket line was still up, and the work stoppage still in effect, he and Mr. Partin again discussed "back to work procedure." It was agreed that Delta would re-hire Robinson without back pay; that Robinson would not be a plant steward; that Mr. Holland would dismiss the suit which resulted in the issuance of the temporary restraining order, and that Mr. Partin would get the drivers back to work. But when Mr. Holland informed Mr. Partin that possible contempt proceedings were in progress and that he had no control over that, Mr. Partin replied that if Mr. Holland could not stop those proceedings, the "deal was off." Later that night, however, Mr. Partin agreed to the arrangements discussed and said he would hold a meeting with his men the next day. On December 4, 1974, Mr. Partin met with the truck driver members of Local #5 at the Delta plant. All defendants were present. Mr. Partin took a "head count" and then explained the terms of the settlement and told the men that it was up to them whether to accept it or not, but that if they didn't, he would authorize Mr. Holland to fire them and that he would help Mr. Holland find replacements for them. He told them that they could not continue to strike without his permission. Within minutes the men agreed to the arrangements, and agreed to return to work the next day. On December 5, 1974, the work stoppage and picketing ended.

According to Mr. Holland, at no time did Mr. Partin say that he had or had not authorized the strike. But he did say, on more than one occasion, that he would keep Delta Concrete shut down until Robinson was re-hired and that if necessary, he would shut down the whole industry.

One thing is certain, and that is that all of the defendants were well aware of the existence of the temporary restraining order, and that it was totally ineffective. The temporary restraining order was ignored and not obeyed, and the strike, picketing and work stoppage continued unabated until Mr. Holland came to terms with Mr. Partin. Immediately thereafter, the picketing and work stoppage ended. It must be remembered that the temporary restraining order was not conditioned on Mr. Partin arriving at a settlement of his dispute with Mr. Holland. It enjoined all of the officers, agents, members, and all persons in active concert and participation with them, including Mr. Partin, from in any manner participating in or in any manner engaging in a strike, work stoppage, or picketing against Delta Concrete. It further required that those restrained, including Mr. Partin, use all reasonable means to induce the members of Local #5 to return to work. This he willfully refused to do, even though, as is evident from the events of December 4, 1974, he had both the authority and the power to do.

Further evidence of Mr. Partin's contempt of the order issued by this Court was brought out by the testimony of Mr. Paul Stevens, the sales manager and vice-president of Delta Concrete. He testified that at the meeting of December 3, 1974, Mr. Partin told him that if he would re-hire Ernest Robinson, the men would go back to work. Mr. Partin was again reminded of the outstanding temporary restraining order against picketing and work stoppages, and Mr. Partin replied that "Judge West don't have any jurisdiction in labor disputes in this area."

The defense witness, Omar Cotton, has been a truck driver for Delta for many years. He testified that Robinson said "It was his picket sign" but that the union "contract says we can't cross picket lines so we didn't." This hardly absolves Mr. Partin from responsibility for his actions.

Mr. Partin testified in his own behalf. He would have the Court believe that he is only a "part-time employee" of Local #5 and that he had no control over what he termed an "unauthorized work stoppage." But his actions on December 2, 3, and 4 of 1974, and the results thereof, belie that assertion. He testified that he told the workers not to strike, but this testimony is totally unsupported by any other evidence, and is, in fact, contradicted by all who testified concerning the conversations between Mr. Holland and Mr. Partin at the various meetings above referred to. Mr. Partin admits knowing about the temporary restraining order, but of course denies saying the things about it that are attributed to him by the other witnesses. His version of his comments about the T.R.O. at the December 2 and December 3 meetings are wholly unsupported and are simply self-serving and not worthy of belief. The contradictory evidence is simply overwhelming.

The fact remains that Mr. Partin, who was obviously in complete command of the affairs of Local #5 at the times involved in this suit, knew of the T.R.O. and deliberately chose to disobey it. Contrary to his assertion that the strike was unauthorized and that he had no control over it is the uncontradicted testimony that as soon as a suitable agreement was reached between him and Mr. Holland, it took but a few words from him to the truck driver members of Local #5 to end the picketing and work stoppage and to send the men back to work. It is obvious that Mr. Partin was personally in complete control of the picketing and work stoppage activities at Delta Concrete during all of the times involved in this matter.

Counsel for Mr. Partin argues that the evidence shows that instead of prolonging the strike, Mr. Partin was at all times here involved negotiating and attempting to get the men back to work. But such an argument is specious. The evidence shows, beyond all doubt, that while Mr. Partin was negotiating with Mr. Holland, he was purposely, knowingly,

and willfully disobeying a specific order of this Court, and that he was encouraging and assisting other members of Local #5 to also disobey the temporary restraining order issued by this Court. It is too obvious to admit of any doubt whatsoever that a word or two from Mr. Partin to his members on November 28, 1974, the day after the temporary restraining order was served, would have brought them into compliance with that order and returned them to work just as his brief words with them did on December 4, 1974. The temporary restraining order was not conditioned on any agreement between Mr. Partin and Mr. Holland. It was absolute and Mr. Partin knew it. That he willfully disobeyed it has been proved beyond a shadow of a doubt.

The defendant, Earl Jones, testified in his own behalf. About the only thing learned from his testimony was that his job is apparently just to do the bidding of Mr. Partin. With Mr. Partin present, Mr. Jones is merely a figurehead. There is no evidence to show that he did anything after the issuance of the T.R.O. Mr. Partin apparently took over at that point. The only contribution that Mr. Jones' testimony makes is to fortify the inescapable conclusion that the entire matter, from the picketing to the final solution, was not a personal venture of Ernest Robinson, but was a union sponsored and controlled activity.

Mr. Dennis Pedescleaux also testified in his own behalf. His testimony was somewhat similar to that of Mr. Jones. There is no evidence that Mr. Pedescleaux did anything of any importance after the issuance of the T.R.O. If he had any authority, which is doubtful, it was, at that point, preempted by Mr. Partin. While he testified that the strike was not a union authorized strike, his testimony is contradicted by that of Arthur L. Jones. Mr. Arthur Jones testified that on November 26, 1974, Mr. Pedescleaux addressed a meeting of the truck drivers and informed them that there would be a one man picket line the next day and that "he would prefer that

they not cross the picket line." While Mr. Pedescleaux obviously sanctioned and encouraged the picketing and work stoppage, there is no evidence of his active participation in the matter following the issuance of the temporary restraining order.

The mere fact that Ernest Robinson carried a sign saying in effect that this was his personal strike does not force the conclusion that the picketing and work stoppage was not in fact a union sponsored activity. It is a normal and usual tactic of some unions to try to camouflage a strike as something other than what it really is. The totality of the circumstances must be examined before a true characterization is made. Any fair appraisal of the evidence in this case must lead to the inescapable conclusion that the Government has proved, beyond any reasonable doubt, that the picketing and work stoppage here involved was a union sanctioned activity, and that it was carried on with the direct participation and approval of Edward Grady Partin, a business agent for Local #5, in willful and knowing violation of a direct and unambiguous order of this Court.

A fair evaluation of the evidence must also lead to the conclusion that the Government has failed to prove beyond a reasonable doubt that the defendants, Earl Jones and Dennis Pedescleaux, took any active part in violation of the temporary restraining order after its issuance on November 27, 1974. While the T.R.O. required that those enjoined use all reasonable efforts to induce the men to return to work, there is little or no evidence to support a conclusion that either of these defendants had the power to do so after the matter was taken over by Mr. Partin. The evidence shows that it was he, among these defendants, and he alone who had the authority and the power and the obligation to make the temporary restraining order effective. He chose instead to willfully disobey it.

CONCLUSIONS OF LAW

The mandate of a temporary restraining order applies to a union and all agents of the union who have actual knowledge of the order, whether or not personal service upon such agents was accomplished. Federal Rules of Civil Procedure, 65(d); *Backo v. Local 281, United Brotherhood of Carpenters and Joiners*, 308 F.Supp. 172 (N.D. N.Y. - 1969); *United Pharmacal Corp. v. United States*, 306 F.2d 515 (CA 1 - 1962); *Reich v. United States*, 239 F.2d 134 (CA 1 - 1956).

This Court has the power to punish, by fine or imprisonment, at its discretion, such contempt of its authority as disobedience or resistance to its lawful orders or commands. Title 18, United States Code, Section 401(3). A temporary restraining order, duly issued, is such an order.

It is well settled that in a prosecution for criminal contempt, the evidence must show the guilt of the accused beyond a reasonable doubt. *In Re Brown*, 454 F.2d 999 (CA D.C. - 1971); *United States v. Jacobs*, 322 F.Supp. 1299 (D.C. Cal. - 1971); *United States v. Bukowski*, 435 F.2d 1094 (CA 7 - 1970); *Yates v. United States*, 316 F.2d 718 (CA 10 - 1963); *Stringfellow v. Haines*, 309 F.2d 910 (CA 2 - 1962); *Cliett v. Hammonds*, 305 F.2d 565 (CA 5 - 1962).

The Court finds, as a matter of law, that the defendant, Edward Grady Partin, had actual knowledge of a lawful order and/or command of this Court, directed to him as an officer and/or agent of Local #5, sometime shortly after November 27, 1974, and in no case later than December 1, 1974, and that therefore the temporary restraining order issued by this Court on November 27, 1974 applied to the defendant, Edward Grady Partin, at all times subsequent to his knowledge thereof.

The Court further finds, as a matter of law, that the evidence in this case shows, beyond a reasonable doubt, that

the defendant, Edward Grady Partin, by his disobedience to the temporary restraining order issued by this Court on November 27, 1974, is guilty of criminal contempt of this Court.

The Court further finds that, as a matter of law, the evidence in this case fails to show beyond a reasonable doubt that the defendants Earl Jones and Dennis Pedescleaux are guilty of criminal contempt of this Court.

Sentence will be pronounced upon the defendant, Edward Grady Partin, at 10:00 a.m. on Thursday, January 23, 1975.

Baton Rouge, Louiisana, January 23, 1975.

/s/E. GORDON WEST
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
January 23, 1975
WEST, J.

CONSOLIDATED CASES:

UNITED STATES OF AMERICA
versus
ERNEST ROBINSON and
EDWARD GRADY PARTIN

CRIMINAL
NO. 74-114

UNITED STATES OF AMERICA
versus
EARL JONES, DENNIS PEDES-
CLEAUX, and J. D. ARNOLD

CRIMINAL
NO. 75-1

These causes, having gone over from January 21, 1975, are continued and resumed this day.

PRESENT: Robert L. Leake, Esq.
Assistant U. S. Attorney

John C. Anderson, Esq.
William G. Ohlhausen, Esq.
James A. McPherson, Esq.
Attorneys for Edward Grady Partin, Earl Jones, Dennis Pedescleaux, and J. D. Arnold

The Court reads Findings of Fact and Conclusions of Law into the record and dismisses the complaint against defendants, Earl Jones and Dennis Pedescleaux, and finds Edward G. Partin GUILTY of criminal contempt of this Court's order of November 27, 1974.

After sentencing, the Court advises defendant, Edward Partin, of his right to appeal and directs the Clerk to enter an appeal on defendant's behalf.

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
v.
ERNEST ROBINSON
EDWARD GRADY PARTIN

CRIMINAL NO.
74-114

MOTION FOR CRIMINAL CONTEMPT

The United States of America, through Douglas M. Gonzales, United States Attorney for the Middle District of Louisiana, moves the Court for an Order of Criminal and Civil Contempt against defendants Ernest Robinson and Edward Grady Partin, residents of this District, on these grounds:

1.

On November 27, 1974, an order issued out of this Court signed by E. Gordon West, United States District Judge, temporarily restraining General Truck Drivers, Warehousemen and Helpers Local Union No. 5, affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, its officers, agents, members and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against Delta Concrete Products Company, Inc. This order further required those restrained to undertake every reasonable means to induce its members to return to their jobs and discontinue work stoppage and picketing then in progress.

2.

Despite service and/or notice of this order, picketing and work stoppage continued for several days after November 27, 1974. Defendants, Ernest Robinson and Edward Grady Partin

have acted individually and in concert to knowingly and willfully disobey a lawful order issued by this Court, in violation of Title 18, United States Code, Section 401(3).

3.

The United States of America desires to prosecute defendants Robinson and Partin for their criminal and civil contempt, and requests the Court to punish them therefor after appropriate notice and hearing in accordance with Rule 42(b) of the Federal Rules of Criminal Procedure.

WHEREFORE, the United States of America prays that defendants Ernest Robinson and Edward Grady Partin be notified and ordered to show cause at a time and place to be set by the Court why they should not be held in criminal and civil contempt in violation of Title 18, United States Code, Section 401(3), and punished, because of their failure to obey a lawful order of this Court.

Respectfully submitted,

/s/DOUGLAS M. GONZALES
United States Attorney
Middle District of Louisiana

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared Douglas M. Gonzales, who, after being sworn by me, did depose and say that all allegations of fact in the above motion are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed before me this 23rd day of December, 1974.

/s/DOUGLAS M. GONZALES
United States Attorney

/s/CHARLES H. BANTA
Clerk of Court

ORDER

Considering the foregoing motion of the United States of America, it is

ORDERED by the Court that defendants Ernest Robinson and Edward Grady Partin appear and show cause at a hearing on January 21, 1975 at 10:00 A.M., in the United States District Court for the Middle District of Louisiana at 707 Florida Street, Baton Rouge, Louisiana, why they should not be held in criminal and civil contempt of the United States District Court for the Middle District of Louisiana in violation of Title 18, United States Code, Section 401(3), because of their failure to obey a lawful order issued by the United States District Court for the Middle District of Louisiana on November 27, 1974, and why they should not be punished for their criminal and civil contempt, this hearing to be held in

accordance with Rule 42(b) of the Federal Rules of Criminal Procedure and other applicable laws and rules of this Court.

Baton Rouge, Louisiana, this the 23rd day of December, 1974.

/s/E. GORDON WEST
United States District Judge

Supreme Court, U. S.
FILED
MAR 12 1976
MICHAEL RODAK, JR., CLERK

No. 75-982

In the Supreme Court of the United States

OCTOBER TERM, 1975

EDWARD GRADY PARTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-982

EDWARD GRADY PARTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, who was convicted of criminal contempt of court for wilfully violating an injunction issued pursuant to Section 301 of the Taft-Hartley Act, 61 Stat. 156-157, 29 U.S.C. 185, contends that he was entitled to a jury trial under 18 U.S.C. 3692.[1]

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[1] 18 U.S.C. 3692 provides:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or

Following a non-jury trial [2] in the United States District Court for the Middle District of Louisiana, petitioner was convicted of criminal contempt, in violation of 18 U.S.C. 401(3). He was sentenced to six months' imprisonment. The court of appeals affirmed in a comprehensive opinion (Pet. App. A).

1. Delta Concrete Products Company, Inc. ("Delta") had a collective bargaining agreement with its employees, who were members of General Truck Drivers, Warehousemen and Helpers Local Union No. 5. The agreement contained a clause providing for compulsory arbitration in all disputes involving claims of improper discharge of Delta employees. To facilitate this arbitration provision, the contract also contained a clause prohibiting strikes and lockouts (Pet. 3; Pet. App. B, 23).

Following the discharge of a union member by Delta in October, 1974 (Tr. 14-15), Local Union No. 5 and petitioner, its business agent, violated the collective bargaining agreement by causing picketing, striking and a work stoppage (Tr. 14-21). On November 27, the same day picketing commenced, Delta filed suit in the United States District Court for the Middle District of Louisiana, seeking injunctive relief to enforce the collective bargaining agreement.

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restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

[2] Petitioner made no pretrial request for a jury (Pet. App. A, 12).

The district court found that the union conduct constituted a *prima facie* violation of the agreement (Pet. App. B, 24), and issued temporary restraining order pursuant to Section 301 of the Taft-Hartley Act, 61 Stat. 156-157, 29 U.S.C. 185 enjoining the union, its members and agents from continuing the violations (Pet. App. B, 26-27; Ex. 1). The order was served on the afternoon of November 27.

Despite the restraining order, picketing continued on November 29 and December 2-3. Although there was no picketing on December 4, the work stoppage continued until December 5 (Tr. 22, 64-66).[3] Thereafter, petitioner and Delta reached a compromise agreement to resolve the labor dispute. Petitioner was convicted of criminal contempt for his role in perpetuating the illegal union activities in violation of the temporary restraining order (Pet. App. B, 23-35).

2. In *Muniz* v. *Hoffman*, 422 U.S. 454, this Court held that 18 U.S.C. 3692, which is derived from Section 11 of the Norris-LaGuardia Act,[4] does not require a jury trial in contempt proceedings arising out of

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[3] No picketing or work stoppages took place on November 28 and 30, and December 1, which were holidays (Pet. 3-4).

[4] Section 11 of the Norris-LaGuardia Act, 47 Stat. 72-73, 29 U.S.C. (1946 ed.) 111, read, in pertinent part, as follows:

In all cases arising *under this Act* in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: * * *. [Emphasis added.]

the violation of an injunction under Section 10(*l*) of the Taft-Hartley Act, 61 Stat. 149-150, as amended, 29 U.S.C. 160(*l*). Noting that the injunction in *Muniz* was sought by the National Labor Relations Board, petitioner claims that the *Muniz* rationale does not extend to wilful disobedience of an injunction obtained by a private party under Section 301 of the Taft-Hartley Act and *Boys Market, Inc.* v. *Retail Clerks Union*, 398 U.S. 235. It matters not, however, whether the government or a private party obtains injunctive relief under the Act: "[b]y providing for labor act injunctions outside the framework of Norris-LaGuardia, Congress necessarily contemplated that there would be no right to jury trial in contempt cases." *Muniz, supra*, 422 U.S. at 463-464.

As this Court held (*id.* at 463):

> * * * § 11 was limited by its own terms and by judicial decision to cases "arising under" the Norris-LaGuardia Act. *United States* v. *Mine Workers*, 330 U.S. 258, 298 (1947). Injunctions issued pursuant to either the Wagner Act or Taft-Hartley Act were not issued "under," but in spite of Norris-LaGuardia; and contempt actions charging violations of those injunctions were not "cases arising under" Norris-LaGuardia. Section 11 of Norris-LaGuardia was thus on its face inapplicable to injunctions authorized by the Wagner and Taft-Hartley Acts * * *. [Footnote omitted.]

This conclusion as to the scope of 18 U.S.C. 3692 is underscored by the legislative history of its codification into the Criminal Code. "Not a word was said in connection with recodifying § 11 as § 3692 * * * that would suggest any * * * important change in the settled intention of Congress, when it enacted the Wagner and Taft-Hartley Acts, that there would be no jury trials in contempt proceedings arising out of labor act injunctions." *Id.* at 467. Thus, the court of appeals correctly held, "[h]ere, as in *Muniz*, an injunction was entered 'outside the framework of Norris-LaGuardia.' The injunction is entitled, therefore, to the traditional protection of non-jury contempt proceedings" (Pet. App. A, 17, footnote omitted).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1976.

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